L/E:PFPATMAN:MA 6/6/67

DEPARTMENT OF STATE

Memorandum of Conversation

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DATE: May 31, 1967

DEPARTMENT OF STATE A/CDC/MR
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SUBJECT: Italian Aviation Negotiations - Meeting on May 31 in Ambassador Capomazza's Office (12:00 to 3:30 p.m.)

PARTICIPANTS: FOR THE U.S.: Messrs. Loy, Minetti and Patman.

FOR ITALY: Messrs. Capomazza, Varalda and Malintoppi.

COPIES TO:

E/TT - Mr. Loy
E/OA - Mr. Bolster
E/OA/AN - Mr. Knight
E/OA/AL - Mr. Rodriguez
EUR/AIS - Mr. Blake
Amembassy Rome (2) - Mr. Narten
CAB (2) - Mr. Minetti
Mr. Scibilia
L/E - (2)

Referring to the draft exchange of notes to extend the Agreement, Mr. Loy stated that his proposition had been that the notes should reflect the factual situation regarding the proposed extension. First, referring to the Italian counter-draft, Mr. Loy said that omission of the first paragraph of the United States draft made the purpose of the note mysterious and appeared to create legal difficulties. Second, it was not a fact that the chairmen of both delegations had made a joint proposal for the extension.

Mr. Varalda said he thought the extension had been Mr. Loy's proposal.

Ambassador Capomazza agreed that Mr. Loy had suggested the exchange of notes to extend the agreement. He said that, because of "technical difficulties", he had stated he needed to undertake consultations and that Mr. Loy had suggested the extension. "If it is Italy which asks the USA to make the extension, then the consultation is finished." Referring to the airline applications for unilateral permits, he said the note exchange was intended to give the governments freedom of action.

Mr. Loy said the United States had intended to make its draft factual.

Ambassador Capomazza asked if it was agreed that the airlines must present their filings in order "to interrupt the guillotine".

Mr. Loy said that, if the notes were exchanged, then there would be no need for filings.

Ambassador Capomazza said that for Italy there should be filings anyhow. "If they file, permission will be given."

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Mr. Loy said that if the notes are exchanged, tomorrow is in fact like yesterday; that is, the Agreement remains in force. The filing is intended to take care of a situation in which there is no Agreement.

Ambassador Capomazza said he was ready to sign the exchange of notes, but not the United States draft.

Mr. Loy said he did not believe that the United States draft language implied that Italy is begging for an extension.

Ambassador Capomazza said that neither side need propose the extension, that the governments may simply "fall into agreement".

Mr. Malintoppi said that the Ambassador had understood Mr. Loy to mean there should be a joint proposal.

Mr. Loy said the United States had given Italy its substantive answer on Monday. "You said then, 'let's go more slowly.'"

Ambassador Capomazza interrupted to say that the United States had kept Italy waiting "for months, in order to consult your Government".

Mr. Loy said, "the fact is that you wanted time, and I said we can accommodate you."

Ambassador Capomazza said, "can't you accept a reference to joint?"

Mr. Loy said, "no, I am not authorized to propose an extension but only to agree to one".

Ambassador Capomazza said, "give me your communique." He said he had gone to great lengths to make an agreement. Further discussions could be held, but not across the table.

Mr. Loy said he honestly thought the United States document "meets the standard of a neutral document to extend the termination date."

Ambassador Capomazza said with regard to the airline companies, that they must present their requests, "whether or not the notes are exchanged".

Mr. Loy said he did not understand why.

Ambassador Capomazza said he wanted the exchange drafted in a different way. "I am ready to sign, but only my draft."

Mr. Loy asked Mr. Malintoppi if he would explain the legal situation to Ambassador Capomazza.

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Mr. Malintoppi said "let me talk with the Ambassador".

There was a brief recess.

After the recess, Ambassador Capomazza asked if Mr. Loy agreed that the subject of an exchange of notes had come up yesterday.

Mr. Loy answered, "yes".

Ambassador Capomazza then referred to the recent exchange of notes regarding unilateral permits (those of the 19th and 24th). "Those notes", he said, "explained how presentation of requests by the companies would postpone cessation of their services. This morning Alitalia is presenting its application to the CAB. Can this be withdrawn? If so, we can discuss the texts of notes.

Mr. Minetti answered that an application could be withdrawn.

Mr. Malintoppi referred to the United States proposal for an exchange of notes and said that a single document signed by both parties would be sufficiently binding in international law to accomplish the extension. In that case, neither side need propose the extension.

Mr. Patman stated that it was not the practice of the State Department to make agreements in that manner and that, in order to do so, we would have to consult the Department.

Ambassador Capomazza said he did not wish to appear to be trying to push for an agreement. He wished simply to make a commercial deal.

Mr. Loy said it was not the United States intention "to trick Alitalia into filing while United States companies do not file." He said he could understand that Italy would not want to have Alitalia file if the United States carriers did not file.

Mr. Malintoppi said that the carriers of neither country need file if the notes are exchanged.

Mr. Loy agreed.

Ambassador Capomazza looked again at the United States proposal, and studied it for some time. "Can you accept the word 'jointly'," he asked.

Mr. Loy explained the use of the passive voice in the phrase "it is proposed". In that way the United States had tried to avoid any suggestion of one party pleading with the other for an extension. He said that the United States wished to avoid polemical documents. He stated, however, flatly that use of the word "jointly" would not be acceptable.

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Ambassador Capomazza suggested use of the phrase "it has been found expedient from both sides that...". Referring again to possible continuation of discussions, he said that if more progress is ever to be made, it will be made in private conversations. "All progress in the past was made in that way, like at the Congress of Vienna". Continuing, he said that if the United States would accept addition of the phrase "it is proposed from both sides", then he would accept the first paragraph of the United States draft.

Mr. Malintoppi said the notes should point out that there was a mutual desire on both sides, if there was to be exchange of an offer and acceptance.

Ambassador Capomazza said that if extension were only to be for Italy, and the United States would not find it useful, then he could not sign the exchange of notes. "If there is no mutual desire, then the substance of exchange is not there. I think the exchange will be useful to both sides. If this does not appear in the document, then the document does not mean anything." Continuing, "I know you say you have made your last offer, yet I feel the situation should be explored". Italy considers, he said, that the agreement does not expire until tomorrow, so the notes could be signed tomorrow.

Mr. Loy said the United States would have to sign today or Alitalia would have to file with the CAB.

Ambassador Capomazza asked what would happen if there were no exchange.

Mr. Loy said the agreement would die at midnight. The carriers would have to file, though perhaps the United States carriers would have an extra day.

Ambassador Capomazza asked about a continuation of the discussions.

Mr. Loy said these would then terminate. "I expect and hope they would resume again, but this would seem a logical place to stop, since both sides are exhausted. That would be my proposal."

Ambassador Capomazza asked how long, in that case, the situation would remain in which the carriers of both countries would continue to fly.

Mr. Loy said he did not know. Continuation of flights indefinitely in the absence of an agreement would be "unsatisfactory". Nobody would like it.

Ambassador Capomazza asked if, then, Mr. Loy did not see the conversations continuing without the exchange of notes. He said he wished to continue the talks for 8-10 days.

There was a short recess.

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After the recess Mr. Loy proposed inclusion of a new sentence in the United States draft that would read as follows: "It is understood that the United States delegation has acknowledged that the deferral would be useful."

Ambassador Capomazza asked Mr. Minetti if he could insure that Alitalia's filing would not be made if there were an exchange of notes.

Mr. Minetti said that he could.

The text of the United States drafts (with the new sentence included) was agreed to by the Italians as the text for the note exchange. The United States representatives got up to leave. But before they could do so, Ambassador Capomazza said he wanted to talk further about the substance of the negotiations.

Responding to this, Mr. Loy stated that Italy could not receive any new points in the United States or beyond, other than those contained in United States Document 6.

Ambassador Capomazza said, "I will have to talk with my Government, but if I cannot talk with you, what is the point of extension?" He said he did not understand Mr. Loy's previous statement.

Mr. Loy said he thought an extension had been agreed upon, that the United States delegation was prepared to continue the talks or to change its plans and terminate them. He did not, however, want any misconception about what things the United States could talk about and what things it could not.

Ambassador Capomazza said that it was possible to talk without agreeing. He asked if Mr. Loy were ready to talk with him "in a more friendly way". He asked Mr. Loy "to be clear and frank."

Mr. Loy said he was fully prepared to talk, but didn't know quite what about.

Ambassador Capomazza said that if the whole Agreement could be taken up there would perhaps be possibilities. But if discussions were approached in a certain way, they would have no use. He said he wanted all things clear on paper, such as capacity, all-cargo, the United States route schedule. "I know you don't want to give us more, and you know that we want more." He said that much more progress could be made on these subjects in private talks than across the table. "I am asking you to start the next seven days in a relaxed way and approach them in a different spirit.

Mr. Loy said he was prepared to talk but that he had considerable hesitancy in negotiating in private. "Private talks can supplement informal meetings but cannot substitute for them."

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Ambassador Capomazza suggested that the two might be alternated, with formal meetings held when there was a need to make official statements.

Mr. Loy asked, "Just to make certain we are not involved in a misunderstanding, tell me what would you propose to talk about if we had a private meeting tomorrow?"

Ambassador Capomazza said he would expect to go through the route exchange, to examine if agreement had been reached on intermediates and to determine how to be sure that Australia and Africa were excluded from the United States routes. If progress were made on these subjects, then there could be a full, formal meeting.

Mr. Loy said that for the last month, Ambassador Capomazza had distinguished substance and detail. "I am reluctant to go very far into detail until we have your terms for agreement on substance. Substance includes your points in the United States and your beyonds. If we have your answer that these matters are settled, we can talk about how to write the exclusion of our beyonds."

Ambassador Capomazza asked how these beyonds would be excluded. He said Mr. Loy must do so across the table.

Mr. Loy said, "you tell me across the table that you will buy our Document 6 if I drop those two beyonds, and I will do so."

Ambassador Capomazza said, "that I cannot do, since we cannot accept that. That is why we must talk. If we do not have a certain type of agreement, we cannot give you the capacity language you desire. If it is not worth trying to reach that kind of agreement, then it may be worse not better to exchange the notes. Talks must be entered with good will. I would like to try."

Mr. Loy said, "my feeling is that the best way to proceed would be for you to determine whether you can accept our Document 6 with the deletions I have mentioned. You convinced me that we must talk about substance. I made our final offer on substance, and I must find out if that is feasible for you. If not, this delay may not be useful. You are right that many unresolved questions remain, but you have convinced me that we should resolve this first."

Mr. Varalda said that the only way to solve it is to talk.

Mr. Loy said, "not to me."

Mr. Varalda said, "is this then a take-it-or-leave-it offer?"

Mr. Loy said, "I have told you my final position on these matters 'of substance'. I cannot go further. It is no use talking to me about them. I can't do anything more."

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Ambassador Capomazza said the exchange of notes was to let him talk more calmly to his people. "We have not lost a war that we must sign a peace treaty. We are friends."

Mr. Loy said we were indeed friends but that nothing has changed on the United States side so that he could be more forthcoming later. "We have examined our position on this substance and have made our decision. We feel we have met the Italian demands, and an exchange on the basis of our proposal would be good for both of us."

Ambassador Capomazza said that perhaps during this delay we should agree on "a document of disagreement. That would be an orderly way to proceed. You said in your note [referring to the United States draft] that deferral is desirable."

Mr. Loy said, "I was concerned that you would choose to misread that. I do not want to make things more difficult, but if you believe that in the next days we could add points for Alitalia in the United States or beyond, then the exchange is not desirable."

Ambassador Capomazza asked how Mr. Loy interpreted "desirable."

Mr. Loy said, "you said you wanted to discuss our offer with your Ministers in a calm way. If you think that is desirable, I think so too."

Ambassador Capomazza said, "that is necessary, but it is not enough. I cannot go through all the trouble with these notes just for that. Delay should leave things open. During the delay, points of agreement and disagreement must be clarified; there must be an exchange of views on the future; there must be discussion of "structurization", renunciation of the United States beyonds to Africa and Australia, and agreement on intermediates. This is plenty of work for another week. If you limit this paper to make it useless, then it is useless."

Mr. Loy said that he saw the extension as being for the purpose of determining whether there can be a new Agreement before the old Agreement terminates. "To determine that, we need your answer on substance. We do not need to extend the Agreement just to write an Agreed Minute."

Ambassador Capomazza said he accepted that.

Mr. Loy repeated, "we need your answer on substance."

Ambassador Capomazza said that the other day Mr. Loy had suggested that some concessions come now and some later, that there be a "play with dates." This is "another avenue that we have not explored. You seemed not disinclined to explore it."

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Mr. Loy said he knew that Italy was not satisfied with the United States proposal. The United States is not satisfied either and will want to come back later. "That was the sense in which I see the usefulness in a two step agreement."

Ambassador Capomazza said it is implicit in all agreements that they are not final. "If one country is not satisfied, it tries to improve its position. That is why we denounced. My idea is to explore the avenue of deferral to see if at this time we can see solutions for the future. This is a very responsible idea. Your response is not an answer, it avoids an answer; it is sneaky."

Mr. Loy explained that when the United States foregoes something that it wants it means that it will have to come back to Italy in the future to get that, and "you can say that we will trade." That is one reason the United States did not want to drop the Australia and African beyonds.

Ambassador Capomazza said "Varalda says that I am a staunch friend of the USA. I am the only one who does not want to let this go. My Minister was reluctant to agree to extension. Civilavia and Alitalia want to laugh at me. If it is useless, I wish to spare my prestige rather than make a last-day effort. It's up to you. If extension would be a waste of time, let's not waste the time. We will let the airlines do what they want with the requests and let the CAB and Civilavia do what they want with them."

Mr. Loy said, "I can only answer this way. If the Government of Italy is fully convinced that the routes for Italy in our Document 6 are inadequate and that, without the addition of points in the United States or beyond there is no chance for agreement, I would say extension is not useful. If that is not totally clear, then an extension could be useful."

Ambassador Capomazza said, "we could restrict your schedule to a size that would permit us to accept your offer for our routes. If we could do that, extension would be useful. If not, it is better that we not proceed with the extension. I want to get an agreement with the United States for political reasons. The rest do not care. Also, perhaps it is important for you that my position as negotiator not be damaged. Everyone will laugh at me."

Mr. Loy said, "I have no intention of making your position as negotiator any more difficult. One reason I was very anxious it be clear how these days would be useful is that I do not want you to make the extension under any misconception. That is why I say there should be no extension if you need routes more than those in our Document 6. You say you would have to do something about United States routes. We have helped you by suggesting dropping Africa and Australia. We have also previously said that there may be some things among our beyonds that could be discussed, but in Document 6

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we dropped many of our requests. We cannot tinker much longer with Document 6 and keep it a fair exchange. But it is not true that we cannot make any more changes on our routes. With regard to extension, the critical question is, whether, as I see it, you feel that essentially Document 6 is unacceptable even as amended by dropping Australia and Africa. We cannot add anything on your side. If we can start from that position, we have something to talk about. We can talk about our beyonds, though we do not have much room to play with them. The United States Government cannot rethink its offer of routes for you in the next 8 days. With regard to my plans to go to Paris on Friday, if it is useful that I stay, I shall stay. This negotiation is my absolute first priority."

Ambassador Capomazza said, "I think we should meet at 8:00 p.m."

Mr. Loy said with regard to airline filings, that these must be made if no agreement to extend is reached. He asked how United States airlines could file this evening if the notes were not exchanged.

Ambassador Capomazza said, "for us the time expires tomorrow evening."

The United States representatives departed without any further substantive discussion.

Clearance: USDEL - Mr. Loy

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